

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
SCOTT P. TRENT : DETERMINATION
for Redetermination of a Deficiency or for Refund of : DTA NO. 822626
Personal Income Tax under Article 22 of the Tax Law :
for the Year 2007. :

Petitioner, Scott P. Trent, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 2007.

On May 27, 2009 and June 4, 2009, respectively, petitioner, appearing by Frank C. Kieपुरa, Esq., and the Division of Taxation, by Daniel Smirlock, Esq. (Kevin R. Law, Esq., of counsel), waived a hearing and agreed to submit this matter for a determination based on documents and briefs submitted by September 21, 2009, which date began the six-month period for the issuance of this determination. After review of the evidence and arguments presented, Timothy Alston, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation properly disallowed petitioner's claimed itemized deductions.

FINDINGS OF FACT

1. Petitioner, Scott P. Trent, timely filed his 2007 New York State resident income tax return on April 15, 2008. Petitioner itemized his deductions on his return, which claimed a refund of \$1,546.00.

2. By letter dated May 12, 2008 the Division of Taxation (Division) advised petitioner that his return had been selected for review. The letter requested that petitioner provide documentation to substantiate his claimed itemized deductions.

3. Petitioner responded by providing the Division with certain documents. Following a review thereof, the Division disallowed petitioner's New York itemized deductions in full and recomputed his 2007 tax liability using the standard deduction of \$7,500. This recomputation resulted in a refund of \$241.03 issued to petitioner by check dated October 24, 2008.

4. Petitioner's New York itemized deductions totaled \$19,946 and consisted of \$747 in gifts to charity and \$19,199 in job expenses and certain miscellaneous deductions in excess of 2 percent of adjusted gross income.

5. Petitioner provided documentation to substantiate \$610 in charitable donations for the year at issue. This documentation was accepted by the Division. Petitioner offered no additional documentation for his claimed charitable contributions with his submissions in this proceeding.

6. The deduction for job expenses and miscellaneous deductions consisted, in part, of \$4,144 in unreimbursed employee expenses (before 2 % floor). Petitioner's Federal Form 2106 (Employee Business Expenses) indicates that this amount consists of \$1,369 in vehicle expense (2,822 business miles multiplied by standard mileage rate), \$1,341 in meals and entertainment (after the 50 percent reduction), \$882 in travel expense while away from home overnight, and \$552 in other business expenses.

7. To substantiate the claimed business mileage noted above, petitioner submitted a calendar with handwritten entries indicating an event, location and mileage number. A few examples include January 31: "Mayor Event - Gracie Mansion 21 Miles;" March 29: "Women's History Month Event - St. John's U. 7 Miles;" July 28: "Albany - Retrieve Docs/Boxes 441

Miles;” and November 26: “Horizon Juv. Center 25 Miles.” Total mileage listed on the calendar is 3,262 miles.

8. To substantiate the claimed expenses for meals and entertainment referenced in Finding of Fact 6, petitioner submitted a similar calendar with handwritten entries indicating an event, a meal and an amount. For example, January 17: “State of City/Lunch BT Café \$14.55;” February 19: “NYS Assoc. of Towns 10th Annual Dinner \$129.67;” June 6: “Mindy Roth Retirement Dinner \$54.16;” and September 26: “Swedish Delegation Lunch \$19.45.”

9. The balance of petitioner’s deductions were miscellaneous deductions which were detailed in a statement attached to petitioner’s federal return as follows:

Attorney fees	\$ 3,500
Briefcase	155
Business phone/Cell	640
Job Search Expense	1,617
Occupational small tools	250
Office equipment	598
Office Exp/Dpr/Util	3,900
Professional periodicals	1,592
Tax prep fees	215
Storage	596
Depreciation	<u>3,586</u>
Total	\$16,649 (before 2 % floor)

10. The \$3,500 deduction listed as attorney fees on the statement attached to petitioner’s federal return was designated as “professional fees” on petitioner’s submission of documents to the Division on audit. More accurately, this expense was for psychotherapy sessions provided to petitioner during the year at issue by a licensed clinical social worker/psychotherapist. A letter from the licensed clinical social worker/psychotherapist substantiated that such services were provided and that petitioner paid fees for such services as claimed.

11. Petitioner submitted no documentation to substantiate his deduction of \$155 for the purchase of a briefcase.

12. Petitioner's claimed \$640 deduction for "Business phone/Cell" was for cell phone service. Petitioner submitted Verizon bills for 2007 addressed to him which show a total of \$1,129.48 in payments.

13. In support of his claimed "Job Search Expense" deduction of \$1,617, petitioner submitted documentation showing payments of \$251.20 to 1-800-WE-ANSWER for voicemail and electronic fax services; \$656.76 to Mailboxes, Etc. for mail box rental; \$381.50 to RCN for internet service; \$47.99 to USA.net for email subscription; \$1495 to USA.com for email subscription; and \$283.21 in "miscellaneous supplies" which consist, mostly, of toll receipts, FedEx Kinko's receipts, Staples receipts, and an internet security software receipt.

14. In support of his deduction of \$250 for "occupational small tools" petitioner submitted a receipt for \$270.93 for the purchase of a cell phone.

15. In support of his deduction of \$598 for "office equipment" petitioner submitted receipts totaling \$194.83 for the purchase of memory sticks, CDs and a lithium battery.

16. Petitioner's deduction of \$3,900 for "Office Exp/Dpr/Util" represents 25 percent of petitioner's monthly rental on his residence in 2007. Petitioner contended that he used approximately 25 percent of the space in his apartment as a home office.

17. The deduction of \$1,592 for professional periodicals expense is for petitioner's daily purchase of the following newspapers: NY Sun, Newsday, NY Post, NY Daily News, NY Times, Wall Street Journal and NY Observer. Petitioner did not submit any receipts for such purchases, but asserted that such purchases were made at newsstands, which do not, as a matter of course,

provide receipts. Petitioner's statement in connection with this deduction asserts \$2,002 in annual cost for these newspapers.

18. Petitioner provided an invoice to substantiate his claimed deduction for tax preparation fees.

19. Petitioner's \$596 deduction for "Storage" was for the rental of a U-Haul storage facility. Petitioner substantiated the payments for this rental.

20. Petitioner's \$3,586 deduction for depreciation was based on petitioner's amortization of certain expenses related to activities separate and apart from his employment with the City of New York. Specifically, the expenses relate to petitioner's purchase and registration of internet domain names. The expenses also include corporation franchise taxes paid by a New York corporation called EZPZ, Inc., specifically the fixed dollar minimum paid during the 2005, 2006 and 2007 years. EZPZ's address as listed on the franchise tax returns in the record is that of petitioner and EZPZ's taxes were paid by petitioner's personal checks.

21. During a telephone conversation on May 27, 2009, the Division's representative in this matter advised petitioner's representative of the Division's intent to subpoena petitioner's employer to obtain information regarding petitioner's claimed employee business expenses. By letter dated June 2, 2009, petitioner's representative responded to the Division's representative as follows:

This letter serves to confirm our telephone conversation of May 27, 2009 regarding our client, Scott Trent. While Mr. Trent asserts that all deductions claimed on his 2007 tax return are legitimate, considering that he possess a high profile position with the City of New York and that it is an election year in New York City, he elects to forgo submitting evidence of his employee business expenses in the interest of job security, rather than have subpoenas sent to his place of employment.

22. During the year at issue petitioner was employed by the City of New York Department of Juvenile Justice as the Assistant Commissioner for Communications and Public Affairs.

23. Petitioner's federal adjusted gross income as reported for the year at issue was \$79,715.

CONCLUSIONS OF LAW

A. Petitioner has the burden to show entitlement to the deductions claimed on his return and to substantiate the amount of the deductions (*see* Tax Law § 658[a]; § 689(e); 20 NYCRR 158.1; *Matter of Macaluso*, Tax Appeals Tribunal, September 22, 1997, *confirmed* 259 AD2d 795, 686 NYS2d 193 [3rd Dept 1999]). Furthermore, petitioner was required under the Tax Law to maintain adequate records of his items of deduction for the years in issue (Tax Law § 658[a]; 20 NYCRR 158.1[a]).

B. Petitioner has established entitlement to a charitable deduction of \$610. Without additional documentation, however, no further charitable deduction is allowable. (*See* Finding of Fact 5.)

C. Petitioner has failed to establish entitlement to any of the employee business expenses as claimed on his Form 2106 (*see* Finding of Fact 7) or his other claimed employment expenses of cell phone service (*see* Finding of Fact 12), cell phone (*see* Finding of Fact 14), office equipment (*see* Finding of Fact 15), home office "rental" (*see* Finding of Fact 16), or newspapers (*see* Finding of Fact 17).

Petitioner's statement that he would be withdrawing his claim with respect to these deductions to avoid the issuance of a subpoena to his employer (*see* Finding of Fact 21) and later reasserting this claim with his submission of documents in this proceeding significantly compromises his credibility with respect to the propriety of these deductions. This tactic,

coupled with the absence of any affidavit from petitioner in the record explaining these expenditures in detail and establishing that they were ordinary and necessary expenses in connection with his employment as Assistant Commissioner for Communications and Public Affairs for the New York City Department of Juvenile Justice, clearly justifies this denial.

D. Petitioner's claimed deduction for job search and the assertedly related storage deduction are also rejected. There is no evidence in the record to establish that petitioner was searching for employment during the year at issue. Moreover, the specific expenditures under the "job search" category have a wide range of uses beyond an employment search (*see* Finding of Fact 13). Additionally, even if petitioner established that he was actively engaged in a job search, he has offered no evidence to show that his rental of storage space was an ordinary and necessary expense related to such search.

E. Petitioner's deduction related to his purchase of domain names (*see* Finding of Fact 20) is also properly disallowed. There is insufficient evidence in the record to show whether petitioner was, in fact, engaged in a business of purchasing and holding internet domain names for resale for profit as asserted by petitioner's representative on brief. The absence of a schedule C filed in connection with this claimed business, along with the absence of any affidavit from petitioner describing the business and his activities in connection therewith, weighs against a finding that petitioner was engaged in such a business. It is also unclear from the record under what form such business was conducted. The presence of returns for EZPZ, Inc., raise the question of whether petitioner conducted this activity through that corporation, in which case expenses related to the purchase of domain names would not be deductible on his personal return. Additionally, it is noted that petitioner has offered no rationale for his deduction of EZPZ's corporate franchise taxes.

F. Petitioner's payments for psychotherapy sessions (*see* Finding of Fact 10) were not deductible as business expenses. Such payments would appear to be medical expenses, deductible only in excess of 7.5 percent of adjusted gross income (*see* Internal Revenue Code § 213 [a]). As that threshold has not been met (*see* Finding of Fact 23), these expenses are not deductible. Petitioner's argument that such payments are properly deductible as professional fees because the provider of the services is a professional is without merit. By this logic any payment for services rendered by any physician or surgeon would be deductible as a miscellaneous deduction rather than a medical expense deduction.

G. Petitioner substantiated his tax preparation fees (*see* Finding of Fact 18) and such fees are properly deductible.

H. Petitioner's claimed deduction for the purchase of a briefcase is properly denied as unsubstantiated (*see* Finding of Fact 11).

I. Pursuant to the preceding discussion, petitioner's allowable New York itemized deductions do not exceed his standard deduction. Accordingly, the Division properly recomputed petitioner's 2007 New York personal income tax liability.

J. The petition of Scott P. Trent is denied.

DATED: Troy, New York
March 11, 2010

/s/ Timothy Alston
ADMINISTRATIVE LAW JUDGE